

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009CF0749
)	EEOC NO.: 21BA83116
<b>GLADYS APONTE,</b> )	ALS NO.: 09-0738
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Diane M. Viverito presiding, upon Gladys Aponte's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>[1]</sup> of Charge No. 2009CF0749; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. On September 15, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged the State of Illinois Worker's Compensation Commission, ("IWCC") issued her a written reprimand because of her ancestry, Hispanic (Count A), and her national origin, Dominican Republic (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On November 23, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On December 28, 2009, the Petitioner filed this timely Request.
2. IWCC employed the Petitioner as an Office Coordinator.
3. The Petitioner alleged that during a meeting on August 20, 2008, IWCC's Division Manager accused her of abusing state property by making too many personal calls.
4. On August 21, 2008, the Division Manager sent the Petitioner an email regarding the August 20<sup>th</sup> meeting, a copy of which the Petitioner attaches to her Request. The Division Manager stated that the purpose of the email was to document their discussion of August 20<sup>th</sup> regarding the Petitioner's high number of outgoing phone calls in April 2008.

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<sup>[1]</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

5. In her charge, the Petitioner alleged IWCC issued her a written reprimand on August 20, 2008, because of her ancestry and national origin.
6. IWCC states that the Petitioner was not issued either a written or oral reprimand on August 20, 2008. Rather, IWCC states the Petitioner received a counseling on August 20, 2008. During the investigation IWCC submitted to the Respondent a copy of the Petitioner's counseling memorandum dated August 20, 2008. The memorandum stated the Petitioner received counseling regarding the misuse of state property and abuse of time due to excessive phone usage.
7. In her Request, the Petitioner gives a brief history of her employment with IWCC and her version of the events that led to the August 20<sup>th</sup> meeting. The Petitioner argues that the Division Manager is abusing her power. The Petitioner is also requesting the Commission require IWCC to provide its phone records, names of IWCC employees who reimbursed IWCC for telephone calls, IWCC phone bills for 2008 through 2010, and other information regarding IWCC's phone usage policy.
8. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence.

### **Conclusion**

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

There is no evidence the Petitioner received a written reprimand on August 20, 2008. The Petitioner appears to mischaracterize the written documentation of her counseling as a written reprimand.

Even if the Commission were to assume *arguendo* that the counseling memorandum of August 20, 2008, was a written reprimand, there is no substantial evidence the Petitioner was reprimanded because of either her ancestry or national origin. Specifically, there is no evidence that an IWCC employee outside of the Petitioner's protected classes was treated more favorably under similar circumstances. In fact, during the Respondent's investigation, IWCC provided evidence that it had issued counseling to similarly situated employees outside of the Petitioner's protected classes for the same infraction.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and State of Illinois Worker's Compensation Commission, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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**Entered this 22<sup>nd</sup> day of September 2010**

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Diane M. Viverito